

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
- - - - - X

BENJAMIN ONODU,

Plaintiff,

- against -

BEHAVIORAL HEALTH, KINGS COUNTY  
HOSPITAL CENTER,

Defendant.

- - - - - X

REPORT AND  
RECOMMENDATION

CV 10-1325 (FB) (MDG)

GO, United States Magistrate Judge:

This action has been referred to me for pretrial supervision. Plaintiffs commenced this action on March 23, 2010. In an order dated March 30, 2010 (ct. doc. 3), this Court advised Mr. Onodu that if he does not serve defendant within 120 days after the complaint is filed, "the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Because the defendant had not appeared or filed a return of service, by order dated August 25, 2010, I directed plaintiff to complete service and file returns by October 1, 2010.

This Court warned in the August 23, 2010 order that "[i]f service cannot be made by the October 1, 2010 deadline, plaintiff must file a request for leave to extend the time for service pursuant to Fed. R. Civ. P. 4(m)." In an abundance of caution to insure that plaintiff had receive notice of the March order, the Court also enclosed a copy of the March 30, 2010 order. Plaintiff

has failed to file a return of service nor has he submitted an application for leave to extend the time for service or otherwise communicate with the Court.

I therefore respectfully recommend that this Court, sua sponte, dismiss this action without prejudice for failure to effectuate timely service within the 120 day period specified in Rule 4(m) of the Federal Rules of Civil Procedure.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned and the Honorable Carol B. Amon, by March 19, 2012. Failure to file objections within the specified time waives the right to appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

SO ORDERED.

Dated: Brooklyn, New York  
March 2, 2012

/s/

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MARILYN D. GO  
UNITED STATES MAGISTRATE JUDGE